

From: Don Beusee
To: Microsoft ATR
Date: 11/17/01 1:47am
Subject: Microsoft Settlement

To whom it may concern,

I have great concern about the DOJ/Microsoft settlement. I don't think the agreement will work.

What I see as the fatal flaw is the restrictions on the power of the Technical Committee, which insures they won't have enough power to do anything. All they will really end up doing is delaying the process of taking MS back to court when they try to maneuver around the rules.

The finding of the Technical Committee can't be used in court against MS nor can they testify, which means that if they do find MS to be doing something wrong they will tell the US Dept of Justice. The DOJ will then have to go to court to get the authority to investigate MS to produce their own evidence of wrong doing, but only after MS has had a long period of time and ample notice to hide the evidence.

The bit about the TC not being able to speak publicly is also very damaging, because it keeps the members of the TC from saying anything if either side tries to avoid their responsibility. Right now, if the TC found that MS was violating the rules but the DOJ didn't want to investigate they couldn't take their complaints to the public. This makes it far too easy for both sides to just quietly sweep the whole thing under the rug.

Finally, the inability of the TC to take any action other than notifying the DOJ prevents them from having any real power to threaten MS into compliance. At the very least, the TC needs to have the power to petition the judge directly for injunctions to block activities by MS until the DOJ decides on a course of action and the power to petition the judge to fine MS for resisting oversight.

As for the remedies themselves, there are so many loopholes that most, if not all of them, have no teeth to prevent MS from doing what they've been doing all along. And the remedy package is not enough to stimulate competition in this market (which needs it BADLY), even if enforceable with no loopholes, which this package is not). I can itemize each point if you like - just let me know.

The purpose of this email is to let you know that I strongly object to the settlement, with the main reason being that the TC has no power to do anything. This is the weakest part of the settlement. The DOJ already won the case - why doesn't it insist on a strong remedy package and give the TC some real power to take action? The TC should be reporting directly to the courts, on a monthly basis on the status of compliance.

Regards,
Don Beusee

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